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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Addendum

Mission to Italy from 11 to 18 November 2013* **

Summary

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Italy from 11 to 18 November 2013. This was the second visit of a mandate holder to assess the situation of the right to freedom of opinion and expression in the country. The previous visit was conducted in October 2004.

Throughout its recent history, Italy has repeatedly reaffirmed its commitment to ensuring the right to freedom of opinion and expression as defined by international law. Its national legal framework is mostly in line with the relevant international standards. Nevertheless, some concerns have emerged in the translation of commitments and norms into practice.

In this sense, the Special Rapporteur indicates his concerns regarding the continued criminalization of defamation, the vulnerability of the press to frivolous litigation, the unreasonable protection from insult given to public authorities, the existence of threats against some journalists and the deteriorating working conditions of journalists overall.

* Late submission

** The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

With regard to the pluralism of the media, the Special Rapporteur notes his concerns regarding conflicts of interest of senior government officials with holdings in the media,

the removal of the ban on cross-ownership of broadcast and print media, the appointment processes for the management of the Public Broadcasting Services and the membership of the board of independent administrative entities such as the Communications Regulatory Authority. He also notes with concern the lack of transparency with regard to dissemination of information on private media ownership and control.

With regard to access to information, despite the adoption of important normative instruments, the Special Rapporteur notes the lack of framework legislation on access to information held by all public institutions, and not just the public administration. The responsiveness of public institutions to requests for information and the lack of consistency of the various norms should also receive further attention. The Special Rapporteur is also concerned at the recurrence of episodes of hate speech and, in that regard, underlines the importance of strengthening initiatives such as awareness-raising programmes, including information and education campaigns on diversity.

In his conclusions, the Special Rapporteur provides a set of recommendations for law and policy reviews relating to the multiple concerns discussed throughout his report.

Annex

[*English only*]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, on his mission to Italy (11-18 November 2013)

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I. Introduction

1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, undertook an official visit to Italy from 11 to 18 November 2013, at the invitation of the Government. The visit was carried out pursuant to his mandate to assess the compliance of Italy with international standards on the right to freedom of opinion and expression.

2. During the visit, the Special Rapporteur met with the Minister of Integration and the Deputy Minister for Foreign Affairs in Rome. He also met with the Under-Secretary of State on Publishing; the Under-Secretary of State for Justice Affairs; the Councillor to the Vice-Minister on Economic Development and Communications; the Director of the Postal Police Department of the Ministry of the Interior; the First President of the Court of Cassation; the Attorney General; the President of the IX Civil Chamber of the Rome Tribunal; the President of the Communications Regulatory Authority; the President of the Anti-Trust Authority; the President of the Personal Data Protection Authority; members of the Committee of Justice Affairs, the Bicameral Commission for Radio and Television Oversight, the Committee on Constitutional Affairs, the Committees on Infrastructure and Culture of the Chamber of Deputies; the Committees on Foreign Affairs and the Promotion and Protection of Human Rights of the Italian Senate; the President and Director-General of Radiotelevisione Italiana (RAI); members of the Parliament and a number of other senior officials.

3. In addition, the Special Rapporteur met with journalists, academics and members of civil society organizations. The Special Rapporteur would like to thank all the people he met for their time, valuable contributions and insights.

4. The Special Rapporteur would like to thank the President of the Senate, Senator Piero Grasso, and the President of the Chamber of Deputies, the Honourable Laura Boldrini, for hosting, and inviting him to, a public event on freedom of information at the Senate. That event brought together State media authorities and civil society organizations; he believes it might serve as a useful model for future multi-stakeholder dialogues on the subject.

5. The Special Rapporteur believes that his visit was timely, given the growing demand for more openness and freedom of expression in the country, as well as the desire expressed by the Government to embark on a new process of political reform.

II. International legal standards

6. In the field of human rights, Italy has ratified a number of international conventions.[1] In carrying out his assessment of the situation regarding the right to freedom of opinion and expression in Italy, the Special Rapporteur has been guided by the relevant

[1] These include the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child as well as its two Optional Protocols, and the Convention on the Rights of Persons with Disabilities as well as its Optional Protocol.

international legal standards. In the present case, the most pertinent treaties are the International Covenant on Civil and Political Rights (hereinafter the Covenant), which was ratified by the country on 15 September 1978 and, at the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) ratified on 26 October 1955.

7. Article 19 of the Covenant provides that:

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

8. Article 10 of the European Convention on Human Rights reads:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

9. The Special Rapporteur is also guided by relevant declarations, resolutions and guidelines of various United Nations bodies, including the Human Rights Committee's general comment No. 34 (2011) on article 19: freedoms of opinion and expression,[2] Human Rights Council resolutions 16/4 on freedom of opinion and expression and 21/12 on the safety of journalists, and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

III. Domestic legal framework

10. In line with international standards, the Constitution of 27 December 1947 of the Republic of Italy refers in several articles to the right to freedom of opinion and expression. In particular, article 17 states: "Citizens have the right to assemble peacefully and unarmed." Article 18 states: "Citizens have the right to form associations freely, without

[2] CCPR/C/GC/34.

authorization, for ends which are not forbidden to individuals by criminal law." Article 21 states, inter alia: "All have the right to express freely their own thought by word, in writing and by all other means of communication. The press cannot be subjected to authorization or censorship."

IV. Situation of the right to freedom of opinion and expression

A. General overview

11. Italy is a multiparty parliamentary democracy and the executive authority is vested in the Council of Ministers, headed by the President of the Council. In the early 1990s, Italy went through a period of political turmoil which led to important reshaping of the political arena. Throughout the past decades, Italy has unequivocally stated its commitment to ensuring the right to freedom of opinion and expression as defined by international law.

12. The previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, conducted a visit to Italy from 20 to 29 October 2004. The purpose of his visit was to ascertain whether the media concentration, coupled with conflict of interest, had an impact on the enjoyment of the right to freedom of opinion and expression, as well to investigate allegations of the deterioration of the work environment of media professionals in Italy.

13. The objective of the second visit to Italy was to reassess the situation of freedom of opinion and expression and to highlight new relevant developments in the country. This was done in the same spirit of cooperation and dialogue and bearing in mind the observations and the recommendations made by the previous Special Rapporteur in his report (E/CN.4/2005/64/Add.5).

14. Nine years later, the current Special Rapporteur notes that some concerns noted on the first visit to the country remain valid. In particular, he is concerned at allegations regarding issues such as the continued criminalization of defamation and insult, the emergence of hate speech, the protection of intellectual property at the expense of freedom of expression, the conflicts of interest of senior government officials with holdings in the media, the procedures for appointing members of the Board of the public broadcaster RAI and of independent administrative entities such as the Communications Regulatory Authority (Autorità per le Garanzie nelle Comunicazioni (AGCOM)).

B. Issues of concern

1. Defamation

15. Defamation is a criminal offence under the Italian Criminal Code. It is described as the case when "anyone ... by communicating with more persons, offends the reputation of someone else". Defamation is punishable by imprisonment of up to one year or a fine of up to 1,032 euros. If the offence consists of an allegation that cannot be proved as truthful, the fine can be doubled.[3] Furthermore, in cases where the offence is directed at a "political,

[3] Criminal Code, art. 595, paras. 1–2.

administrative or judiciary authority or one of their representatives" or at a collegial authority, the punishment can be further increased.[4]

16. In cases where defamation is committed "through the press or by any other means of publicity, or by public act", it is punishable by imprisonment of between six months and three years or by a fine of no less than 516 euros.[5] Furthermore, if it includes an allegation that cannot be proved as truthful, it is punishable by imprisonment of between one year and six years, in addition to a fine of no less than 250 euros.[6] The director or deputy director of the publication, the publisher and the printing enterprise are criminally liable in all cases of defamation through the press.[7]

17. The crime of insulting a person is also punishable under the Criminal Code, according to which "whoever offends the honour or reputation of a present person" is punishable with up to six months' imprisonment or a fine of up to 516 euros.[8] Furthermore, a journalist accused of defamation through the press must demonstrate the objective public interest of the facts reported, which should be exposed in a civilized way. Moreover, even if a journalist is acquitted of the crime of defamation, he or she is not entitled to claim compensation for the legal costs or moral and patrimonial damages.

18. In addition to the criminal lawsuit, an alleged victim of defamation can also pursue a civil lawsuit and claim moral and patrimonial damages.[9] Further, in cases of defamation through the press, the amount of damages is determined "in relation to the seriousness of the offence and the level of dissemination of the publication".[10] Civil liability is also extended to the director or deputy director of the publication as well as to its publisher and the printing enterprise.[11] In the case where a civil court rejects the claim for compensation and moral or material damages, it may decide to grant the journalist compensation for the legal costs.

19. The Italian defamation law remains a serious concern. The Human Rights Committee[12] has indicated that defamation laws must be crafted with care to ensure that they comply with the requirements of article 19, paragraph 3, of the Covenant, and that they do not serve, in practice, to stifle freedom of expression. The Special Rapporteur would like to recall resolution 1577 (2007) of the Council of Europe Parliamentary Assembly, in which that Assembly recommended the complete decriminalization of defamation for the protection of freedom of expression. Following the adoption of that resolution, defamation, libel and slander have become matters of civil action in most European countries. Considering that in Italy, under the amended defamation law, only the sanction of imprisonment is abolished, the Special Rapporteur encourages the Senate to fully comply with that resolution and completely decriminalize defamation, returning the bill to the Chamber of Deputies.

[4] Ibid., para. 4.
[5] Ibid., para. 3.
[6] Law No. 47 of 8 February 1948 (Press Law), art. 13.
[7] Criminal Code, arts. 57, 57 bis, 58 and 596 bis, and Press Law, art. 11.
[8] Criminal Code, art. 596.
[9] Ibid., arts. 185 and 597.
[10] Press Law., arts. 11–12.
[11] Ibid.
[12] See footnote 2 above.

20. The Special Rapporteur has been informed that a new defamation bill is before the Senate for final approval.[13] That new bill has been revised and no longer contains a punishment of imprisonment. However, defamation remains a criminal offence under the Criminal Code and the fines imposed for defamation committed through the media have been significantly increased to between 5,000 and 10,000 euros. Moreover, if the offence consists of an allegation that cannot be proved as truthful, the fine can be increased up to 60,000 euros.[14] The bill also provides a temporary ban on the exercise of the profession of journalist for a minimum of one month up to a maximum of six months, in cases of repeated offences.[15] Furthermore, the press is obliged to publish a rectification of the alleged defamatory statement without any further commentary. Failure to comply is punished with a fine of between 8,000 and 16,000 euros.[16] However, the prompt publication of the rectification of the statement may only have an influence on the judge's quantification of the damages if the defendant is found guilty. Civil liability is no longer extended automatically to the director or deputy director of the publication, but only if a "cause and effect" link is proved between neglected control of the publication and the damage. On the other hand, the bill establishes that, in cases of frivolous litigation, the plaintiff may be fined between 1,000 and 10,000 euros and no compensation is automatically granted for the legal costs of the defendant. The new bill also extends the crime of defamation through the press to online newspapers and the radio.[17]

21. The new bill also eliminates the sanction of imprisonment in cases of insult and defamation between private individuals; however, it provides for a significantly heavier fine. The fine for insult, including through the Internet, has increased to up to 5,000 euros and for defamation between private individuals up to 10,000 euros.[18]

22. The Special Rapporteur heard from various interlocutors that removing the sanction of imprisonment for the crime of defamation was an important step forward by the Government of Italy. It was also explained that the protection of the honour and reputation of a person was still regarded as very important in the country. Therefore, monetary fines had been increased, as the established compensation to the victim was considered insufficient to prevent episodes of defamation. It was further stated that defamation could not be decriminalized completely, as the purpose was to target people who intentionally disseminated false information.

23. The Special Rapporteur reiterated that for a statement to be considered defamatory, it must be false, it must injure another person's reputation and it must be made with malicious intent to cause injury to another individual's reputation. He also indicated that the following principles must be respected with regard to defamation: (a) public figures should refrain from bringing defamation suits, as they are required to tolerate a greater degree of criticism than private citizens; (b) to require truth in the context of publications relating to matters of public interest is excessive; (c) with regard to opinions, it should be clear that only patently unreasonable views may qualify as defamatory; (d) the onus of proof for all elements should be on those claiming to have been defamed rather than on the defendant; where truth is an issue, the burden of proof lies with the plaintiff; (e) in defamation actions,

[13] Bill No. 1119 amending provisions of the Law of 8 February 1948, No. 47 (Press Law), of the Criminal Code and of the Criminal Procedural Code on defamation, defamation through the press or by any another means of publicity or by public act, insult and vexatious litigations.

[14] Ibid., art. 1, para. 5.1.

[15] Ibid., para. 5.2.

[16] Ibid., para. 2.

[17] Ibid., , para.1.

[18] Ibid., art. 2, para. 3.

a range of remedies should be available, including apology and/or correction, and penal sanctions, in particular imprisonment, should never be applied.[19]

24. The Special Rapporteur commends the Chamber of Deputies for its initiative in removing the sanction of imprisonment for the crime of defamation, which he believes is an important step in guaranteeing freedom of expression. However, he considers that defamation should be decriminalized completely and transformed from a criminal to a civil action, with corrections or apologies being applied as remedies. He believes that criminalizing defamation limits the liberty with which freedom of expression can be exercised. He also believes that any criminal lawsuit, even without a prison sentence being foreseen, may have an intimidating effect, particularly on journalists. He would further like to draw attention to the fact that if an economic penalty is applied through criminal law, this will most likely be followed by civil economic reparation for the victim, thus imposing a double economic sanction.

25. The Special Rapporteur is concerned as to the amount of the reparation and the fines imposed. A recurring argument that was reiterated in many of the meetings during the Special Rapporteur's visit with regard to keeping the crime of defamation a criminal offence was that a victim of defamation would normally prefer a criminal to a civil proceeding owing to the fact that a criminal procedure is considered faster than a civil procedure. In response to this argument, the Special Rapporteur would like to underline that the solution to this issue would be to establish a more efficient and expedient procedure in civil court proceedings in line with, inter alia, article 6 of the European Convention on Human Rights and article 19 of the Covenant.

26. With regard to the right to rectification of information, the Special Rapporteur believes that it is important to uphold such a right, but that this should be level with the right of the press or the other party to present and defend their arguments. He believes that a public correction should eliminate the cause for any legal action by the offended party. The Special Rapporteur believes that the purpose of a rectification should only be to correct wrong information given and the harm that may have been done, but it should not entail a punishment.

27. The Special Rapporteur noted with concern that frivolous litigation can become a form of "judicial harassment" against the press or anyone exercising the right to freedom of expression. A media enterprise can have its economic capacity seriously undermined when confronted by multiple defamation cases. Even if claims are dismissed at the preliminary hearing, the economic impact of the expenses generated by various lawsuits can intimidate the journalist or the media vehicle, with repercussions for the work of the entire press. In this regard, the Special Rapporteur noted with appreciation that the Committee of Justice Affairs of the Chamber of Deputies is conducting an investigation into cases of frivolous litigation. The Special Rapporteur encourages the Parliament to establish mandatory fines for frivolous litigation representing 25–50 per cent of the amount requested in frivolous claims, to enhance protection against judicial harassment of the press through lawsuits.

2. Crime of insulting public officials

28. In 1999, the crime of insulting a public official (art. 341 of the Criminal Code) was removed from the Code as it was no longer considered in line with "the current necessities and dominant social conceptions in modern society".[20] However, the Special Rapporteur

[19] See A/HRC/4/27, para. 47. See also A/HRC/14/23, paras. 82–83, A/HRC/14/23/Add.2, A/HRC/7/14, paras. 39–43, E/CN.4/2006/55, paras. 44–55, E/CN.4/2001/64, paras. 43–48, and E/CN.4/2000/63.

[20] Law No. 205 of 25 June 1999, art. 18 (repealing art. 341, Criminal Code).

has been informed that it was later reintroduced, with certain modifications, as article 341 bis of the Criminal Code in the "Security Package" Law No. 94 of 15 July 2009, which entered into force on 8 August 2009.[21]

29. The new law defines insult as "in a public venue or a venue open to the public and in the presence of other persons, offend[ing] the honour and prestige of a public official who is performing an official duty and in the exercise of his powers".[22] It no longer includes insults that are uttered "through telegraph or telephone communications, or through writings or drawings directed at a public official and for reasons related to his duties".[23] The new law no longer provides for a "minimum penalty" of six months of imprisonment and it has increased the maximum penalty from two to three years of imprisonment. Furthermore, if the insult contains an allegation that cannot be proved as truthful, the punishment is even higher. However, the charges can be dropped if the defendant agrees to pay damages before the trial.

30. The Special Rapporteur is concerned about the reintroduction of the crime of insult directed at public officials in the presence of other people. He underlines that public officials should not be protected by a higher threshold for criticism or insult than any other people as, by its nature, their function is subject to frequent public debate and criticism. Furthermore, he is seriously concerned that the practice of allowing the defendant to pay compensation to the victim in order for the charges to be dropped can serve as a form of blackmail against anyone who would prefer to pay a fine rather than risk prosecution.

3. Conflict of interest

31. The Frattini Law No. 215 of 2004 contains provisions that regulate cases of conflict of interest between holding a government position and carrying out professional activities.[24] Specifically, the Law states that the position of manager of a company is incompatible with exercising public office. However, this incompatibility is not extended to the owner or the controlling shareholder of the company.[25] The Law determines that there is a conflict of interest when an "act of commission ... or omission" carried out by a public office holder has a "specific, preferential effect" on the assets of the office holder and also "of his or her spouse or relatives up to the second degree, or of companies or other undertakings controlled by them, to the detriment of the public interest".[26] Moreover, in the case of a breach of the rules on conflict of interest, it is the company manager and not the owner or controlling shareholder who is sanctioned.

32. The Special Rapporteur is aware that, in 2005, the European Commission for Democracy through Law (the Venice Commission) in Opinion No. 309/2004 on the compatibility of the Laws "Gasparri" and "Frattini" of Italy with the Council of Europe standards in the field of freedom of expression and pluralism of the media, concluded that the Frattini Law did not adequately address the problem of conflict of interests. Furthermore, he has been informed that the recommendations made by the Venice Commission have to date not yet been implemented. The Special Rapporteur fully concurs with European Parliament resolution of 25 September 2008 on concentration and pluralism

[21] Law No. 94 of 15 July 2009, art. 1, para. 8, containing provisions on public security (introducing art. 341 bis, Criminal Code).

[22] Ibid., art. 1, para. 9 (introducing art. 393 bis, Criminal Code).

[23] Criminal Code, art. 341.

[24] Law No. 215 of 20 July 2004 on regulations in the field of solving conflicts of interest.

[25] Ibid., art. 2, para. 1.

[26] Ibid., art. 3, para. 2.

in the media in the European Union, which states that "conflicts of interests between media ownership concentration and political power … are detrimental to free competition, a level playing field and pluralism".[27]

33. During his visit, the Special Rapporteur had the opportunity to exchange views with many relevant stakeholders with regard to media ownership and control. Although the Special Rapporteur appreciates the openness of the discussion on the legislation on transparency of the media, he believes that there is a need for legislative reform which would introduce an explicit incompatibility between holding elected or government office and ownership and control of media.

34. The Special Rapporteur considers that to ensure transparency, information on the full identity of the ownership of the media and the decision-making and control mechanisms should be disclosed. He understands that the disclosure of information on ownership, control and sources of revenue of the media would contribute to preventing monopolies, cross-ownership and unlawful concentration of the media, and would also allow people to better interpret the position of various media groups.

4. Public broadcasting service

35. The Gasparri Law (No. 112/2004) contains provisions overseeing a progressive total privatization of RAI and establishes that within 60 days of its adoption, "RAI Radiotelevisione Italiana Spa" should be incorporated into "RAI-Holding Spa". The Law also provides that State-owned shares in RAI-Holding Spa should be sold progressively through a series of public offers until it is completely privatized. However, according to the law, single buyers may only buy up to 1 per cent of the shares. Furthermore, it does not allow the formation of trusts or voting collusion.[28]

36. According to the Gasparri Law and the Consolidated Broadcasting Act (No. 177/2005), the RAI Board is composed of nine members. The Special Rapporteur has been informed that the Ministry of Economy and Finance controls 99.5 per cent of the RAI shares and that the Minister of Economy and Finance and a special Parliamentary Commission for General Guidance and Supervision of the Broadcasting Services appoint members of the Board. The Minister appoints two Board members and also selects which of those two members will be the President of the Board, following the favourable opinion of two thirds of the special Parliamentary Commission. The Commission elects the remaining seven Board members, following a voting system which allows the majority to choose four of them and the opposition to choose the remaining three.[29] The law also establishes that the Director-General of RAI is appointed by its Board "in agreement with the shareholders' assembly". The Director-General is responsible for the management of RAI and has the authority to select the channels and news directors, subject to final approval by the Board.[30]

37. The existence of public service along with private and community broadcasting may often contribute to enhancing plurality in the media. Nevertheless, as indicated by the Human Rights Committee, States should ensure that public broadcasting services operate in

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[27] European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union, para. 5.

[28] Law No. 112 of 3 May 2004 on regulations and principles governing the structure of the broadcasting system and RAI as well as authorizing the Government to issue a consolidated broadcasting act, art. 21.

[29] Ibid. art. 20, and Consolidated Broadcasting Act No. 177 of 31 July 2005, art. 49, paras. 7 and 9.

[30] Consolidated Broadcasting Act No. 177/2005, art. 49, para. 11.

an independent manner.[31] In this regard, the Special Rapporteur is concerned that two out of the nine RAI board members are directly appointed by the Government and that six other members are also nominated by the ruling coalition in Parliament. The Special Rapporteur is also concerned that the concession on the frequencies used by RAI, as well as the public service, is granted by the Ministry of Economy and Finance. To ensure the independence of the Board from Government interference, the appointment of its membership should be fully revised and the transparency of the procedure enhanced. For example, members could be appointed at different of time and civil society should be involved in the procedure.

38. In this regard, the Special Rapporteur would like to refer to the recommendations of the Council of Europe Committee of Ministers and Parliamentary Assembly on guaranteeing the independence of public service broadcasting, which state that the rules governing the status of the boards of management of public service broadcasting organizations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference and recognize that public service broadcasters must be protected against political interference in their daily management and their editorial work.[32]

39. Moreover, with regard to the General Service Contract between RAI and the State, the Special Rapporteur believes that particular attention should be given to guaranteeing the implementation of the principle of diversity and pluralism. Furthermore, the right to judicially challenge the compliance of RAI with the provisions of that public service contract should not be limited to the contractual counterpart of RAI, i.e. the State as represented by the Minister of Economy and Finance, but should be extended to all citizens.

40. In this context, the Special Rapporteur encourages the promotion of open consultations with all stakeholders, including civil society, to discuss the future of the public broadcasting service ahead of the expiry of the licence contract between the State and RAI, which is scheduled to take place in 2016.

41. Another issue of concern is the provision of the Gasparri Law which establishes that RAI must guarantee the free broadcasting of messages that are deemed "socially useful", at the request of the Prime Minister's Office. The Special Rapporteur is concerned that the notion of "socially useful" is relatively unclear and subject to interpretations which could lead to abusive use of this mechanism. In this regard, the Special Rapporteur fully concurs with Council of Europe recommendation 99 (1) on measures to promote media pluralism, which was also quoted by the Venice Commission in its 2005 opinion. It states that "the cases in which public service broadcasting organizations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances."[33]

5. Communications Regulatory Authority

42. The Communications Regulatory Authority (AGCOM) is an independent body which was established under the Maccanico Law No. 249 in 1997. It has the responsibility to ensure equitable conditions for fair market competition and to protect the fundamental

[31] See footnote 2 above.

[32] See Parliamentary Assembly of the Council of Europe resolution 1636 (2008) on indicators for media in a democracy; recommendation 1641 (2004) on public service broadcasting and Council of Europe Committee of Ministers recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting.

[33] Venice Commission, Opinion No. 309/2004, para. 155.

rights of citizens in that regard. It also has competence over the publishing, radio and television broadcasting, and electronic communications sectors. AGCOM carries out the following functions, in particular:

(a) Implementation of liberalization in the telecommunication market through regulation and supervision activities, and through dispute resolution;

(b) Rationalization of resources in the audiovisual sector; application of anti-trust rules in the field of communications; conducting inquiries on dominant positions;

(c) Organization of the registry of communications operators;

(d) Quality control and distribution of services and products, including advertising and protection of children;

(e) Resolution of disputes between operators and consumers;

(f) Fostering and safeguarding political, social and economic pluralism in broadcasting.

43. Furthermore, AGCOM should also ensure that companies operating within the integrated system of communications that belong to a holder of a government post, his/her spouse or relatives up to the second degree, do not act in such a way as to provide privileged support to the particular holder of the government post concerned. In the case of misconduct by a company, AGCOM should order the company to stop questionable conduct and, if possible, to take corrective measures. In case of non-compliance, the company concerned can be fined.

44. As an independent authority, AGCOM has the mandate to oversee the implementation of the regulations established by the Maccanico Law and its subsequent amendments. For that purpose only, they are empowered to adopt their own administrative regulations, but should refrain from expanding their regulatory mandate. The Special Rapporteur believes that all regulations regarding constitutional rights should be approved by Parliament, in particular those affecting the right to freedom of expression.

45. In this regard, the Special Rapporteur was informed that AGCOM can still issue regulations based on legislation by Parliament and that some of those norms are generic and may be loosely interpreted by various authorities and bodies, with consequences for the right to freedom of expression.

46. The issue of intellectual property, for example, was discussed during the visit and a number of concerns were raised regarding the adoption of additional measures for the protection of copyright at the expense of freedom of expression. For the Special Rapporteur, the establishment of norms protecting intellectual property should remain exclusively within the purview of the Parliament.

47. The Special Rapporteur also underlines that, although AGCOM may by law apply some limitations on online content, the removal of online content should be decided by the Court on a case-by-case basis. In particular, he believes that in no case should the contents of an online newspaper be censored. Furthermore, there should never be any liability for the content by the intermediaries.

48. Another issue of concern is the procedure for the appointment of the five board members of AGCOM. The President of AGCOM is appointed by the President of the Republic upon the advice of the Prime Minister in agreement with the Minister for

Economic Development. The Chamber of Representatives and the Senate appoint the remaining four members of AGCOM.[34]

49. In order to ensure the full independence of that regulatory body, additional measures need to be taken to enhance the transparency and objectivity of the procedure for the appointment of its members. In this regard, the Special Rapporteur suggests that the selection criteria for the AGCOM board members, and information on the qualifications and professional experience of the applicants should be published and made accessible to the public, including on the Internet. He also suggests that the shortlisted candidates should be called to a public hearing in Parliament and the final decision should be made through a public vote.

6. Anti-trust provisions

50. The anti-trust provisions of the Gasparri Law establish a ban on the creation and the maintenance of "dominant positions" in the broadcast media market.[35] They also empower AGCOM to identify the existence of a relevant market "in accordance with the principles of articles 15–16 of Directive 2002/21/EC"[36] (European Union Framework Directive), to verify the existence of dominant positions in the relevant market and to take measures necessary for eliminating or preventing the formation of dominant positions. The Gasparri Law also set a cap of 20 per cent on the total number of "television/radio programmes"[37] that a single broadcaster can operate and a cap of 20 per cent on the total revenues of the Integrated Communications System (SIC). SIC includes television, publishing, radio, the Internet, direct advertising activities, sponsorships, revenues from the RAI annual licence fee, sales of cinema tickets, rented or sold DVDs, and direct State grants to print publishers.

51. The anti-trust provisions of the Gasparri Law replace the norms of the Maccanico Law No. 249/1997, which provided, inter alia, that each operator should not own more than two nationwide analogue non-encrypted television channels. It also provided that any broadcaster with more than 30 per cent of the revenues from advertising, public fees (for public channels) or pay-per-view services in their respective media market would be considered as holding a dominant position.[38] However, the Gasparri Law does not provide any reference to thresholds identifying what would constitute "dominant positions" in the respective media markets; it only contains thresholds related to the number of television channels and the revenues within SIC.

52. Furthermore, a recent amendment to the Gasparri Law replaced the 20 per cent cap on "television/radio programmes" with a broader definition of "television/radio programming", which is defined as "a group of programmes … under the same editorial trademark and destined to the public" and which excludes "delayed transmission of the same programming", "merely repetitive transmissions" and "pay-per-view programmes or programme packages".[39]

53. Moreover, as of 31 December 2012, a provision of the Gasparri Law which regulates cross-ownership of broadcast and print media has removed the ban on television

[34] Art. 1, Law No. 249 of 31 July 1997 as amended by Law Decree No. 201/2011.
[35] Law No. 112/2004, art. 5, para. 1 (a).
[36] Ibid., art. 14, paras. 2–3.
[37] Ibid., art. 15, paras. 1–2.
[38] See Law No. 249/1997, art. 2.
[39] Art. 15, para. 1, of the Gasparri Law as amended by Legislative Decree No. 44 of 15 March 2010 implementing Directive 2007/65/EC, art. 4, para. 1 (g) and (h).

broadcasters who operate more than one national channel owning or purchasing shares of newspaper publishing companies.[40]

54. The Special Rapporteur would like to reiterate the concern that was expressed by the previous mandate holder during his visit in 2004 regarding the negative impact of the concentration of private media in the hands of senior government officials, and of the State's influence over the public media. Such an environment is conducive to a climate of intimidation in which public administrators might exercise censorship, limiting freedom of opinion and expression in the country. He is also concerned that such a climate could lead to a situation of self-censorship where journalists would refrain from making statements that might be construed as critical of the authorities.

55. The Special Rapporteur recalls that the Human Rights Committee has already indicated in its general comment No. 34 (2011) on the right to freedom of expression that States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.[41] In this regard, he regrets the amendment of the Gasparri Law and the removal of the ban on cross-ownership of broadcast and print media. The Special Rapporteur reiterates the concerns raised by the Venice Commission, which stated that those amendments could allow incumbent broadcast media groups to expand into the print media sector.

7. Situation of journalists

56. During his visit, the Special Rapporteur heard testimonies from journalists and social communicators who had suffered threats, intimidation and assault in the exercise of their profession. A civil society study had compiled over 300 cases of intimidation against journalists in Italy in 2012, including 104 verbal and oral threats and 16 cases of assault.[42] The Special Rapporteur deeply regrets that in many cases, threats and attacks against journalists occur with impunity.

57. The Special Rapporteur was also informed of the deteriorating working conditions of journalists, which might expose them to further harm and affect their independence. He was appalled to hear about the proliferation of informal working arrangements through freelance contracts, and the low remuneration received in such cases. He was further informed that freelance journalists are paid between 5 and 50 euros per article, or sometimes receive 4 centimes per line. He is particularly concerned at the greater possibilities of exploitation due to the irregularity of their work. The Special Rapporteur therefore strongly recommends that standards be set and applied urgently, including tariffs for fair remuneration, in line with the cost-of-living indicators.

58. The role of journalists and social communicators is as relevant to a democratic society as is the role of human rights defenders, because they become a guarantee of the enjoyment of human rights and facilitate the provision of information to society, which allows the full participation of citizens in public life. Therefore, he believes that it is essential to create an environment of professionalism and independence within the media sector where media professionals can work without undue influence from the State. In this regard, the Special Rapporteur welcomes the statement made by the President of the Senate in December 2012 recognizing the need for a law that will sanction anyone who obstructs the exercise of freedom of information.

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[40] Law No. 112/2004, art. 15, para. 6.

[41] See footnote 2 above.

[42] See www.giornalistiminacciati.it/en/.

8. Access to information law

59. Law 241/1995 (Administrative Procedure Act) is one of various instruments regulating access to information held by government institutions in Italy. A number of additional legal instruments[43] have been adopted over the past five years introducing additional core principles, such as full disclosure of all information and total accessibility. Most importantly, Italy recently passed a new transparency law (33/2013) prescribing a number of measures for proactive disclosure. Despite recognizing important advances in the national norms, the Special Rapporteur notes that the current normative framework lacks consistency, since it only applies to government and related public administration bodies and does not cover all types of information, but only information already compiled in existing acts and documents.

60. Furthermore, a recent study[44] identified important challenges to the implementation of norms relating to access to government-held information. It evaluated the response of State entities to 300 requests for information in various thematic areas, ranging from human rights to finance. Only 27 per cent of requests resulted in the provision of what was considered to be fully satisfactory information, which means that by far the majority of responses, 73 per cent, were inadequate. The study also noted the very high level of administrative silence: 65 per cent of the requests had received no response from public authorities after 30 years.

61. In his previous report to the General Assembly,[45] the Special Rapporteur noted that the recent adoption of national laws protecting access to information was a positive step towards giving effect to central components of the right to freedom of opinion and expression as established in international treaties. However, the implementation of those laws continues to be hampered by obstacles such as the reluctance of officials to release information, the prevalence of secrecy laws, complex bureaucratic procedures and limited technical capacity.

62. Therefore, the Special Rapporteur underlines the importance of adopting unique coherent framework legislation on access to information held by all the public institutions and not just limited to the public administration. The Special Rapporteur also highlights the need to revise procedures in all State institutions in order to ensure that access to information is rapid, inexpensive and not unduly burdensome.

9. Hate speech

63. The Special Rapporteur considers that the phenomena of hate speech and discrimination seriously affect and undermine the dignity of individuals. He is particularly concerned at the occurrence of hate speech against migrants and other minorities in electoral campaigns, which is unfortunately becoming common in many European countries, partly as a consequence of the impact of the recent financial crisis. He fully agrees with the statement made by the United Nations High Commissioner for Human Rights after her visit to Italy in March 2010 that deliberate negative stereotyping of any group of people was unacceptable and dangerous, and in which she urged politicians, the media and public officials not only to avoid that type of rhetoric themselves, but also to

[43] Law 15/20097; Law 150/20098; Law 183/20109; Decree Growth 2.0 – Digital Agenda 10; Decree Law No. 83/201211;

[44] Diritto Di Sapere and Access-Info Europe, *The Silent State: Access to Information in Italy* (April 2013).

[45] A/68/362.

publicly campaign against such behaviour by others".[46] The Special Rapporteur stresses that, in accordance with article 20 of the Covenant, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. He stresses that, although the State does not have the responsibility to protect individuals from offence, it has the responsibility to protect them from harm, whether it be discrimination or violence.

64. In a recent thematic report,[47] the Special Rapporteur addressed the worrying increase in expressions of hate, incitement to violence and discrimination. In the study, he emphasized that the promotion and protection of the right to freedom of expression must go hand in hand with efforts to combat intolerance, discrimination and incitement to hatred. Accordingly, he emphasized that legal measures combating hate speech should be complemented by a broad set of non-legal measures to bring about genuine changes in mindsets. He recommended, for example, that political leaders actively promote tolerance and understanding towards others and support open debates and exchanges of ideas in which everyone can participate on an equal footing. He also called on public officials to systematically denounce and condemn hate speech publicly.

65. In this regard, the Special Rapporteur would like to underline his strong support to the Government, and in particular the Ministry of Integration, in their fight against this scourge through the development of awareness-raising programmes, including information and education campaigns on diversity, which can contribute to better communication and understanding among different ethnic groups. He believes that prevention is the most important tool and that such educational programmes can contribute to eradicating ignorance, which is often the root cause of unacceptable attitudes and behaviour.

66. During his visit, the Special Rapporteur was informed of a proposed bill on homophobia and transphobia. He strongly supports that initiative and believes that it is an important first step in addressing discrimination against the lesbian, gay, bisexual and transgender population in the country. However, he underlines that the bill should not include any exceptions for institutions or particular groups which might generate loopholes in its application. He also encourages the Parliament to consider adopting a law on other forms of hate speech, such as misogynistic messages and incitement to violence against women and persons with disabilities.

10. National human rights institution

67. The Special Rapporteur reiterates the recommendations, made by the previous Special Rapporteur after his visit to Italy in 2004 and by the United Nations High Commissioner for Human Rights after her visit to the country in March 2010, that the Italian authorities should create a national human rights institution in accordance with the principles relating to the status of national institutions (the Paris Principles).[48] The Special Rapporteur is aware that the Government of Italy, after the universal periodic review, did not accept the recommendation on the establishment of a national human rights institution by the end of 2010. He is also aware that the Government indicated that a bill on the establishment of such an institution "will be submitted to the Parliament as soon as the required budgetary resources are made available".[49]

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[46] Statement by the High Commissioner after her visit to Italy, 10–11 March 2010, available from: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9901&LangID=E.

[47] A/67/357.

[48] General Assembly resolution 48/134, annex.

[49] A/HRC/14/4/Add.1, recommendation No. 14, p. 3.

68. During his visit, the Special Rapporteur was informed that a bill on the establishment of a human rights commission had been presented to the Parliament in February 2013. The Special Rapporteur strongly supports that initiative and encourages the Parliament to adopt the bill, in accordance with the Paris Principles.

69. The Special Rapporteur believes that the creation of a national human rights institution is crucial for promoting and monitoring the effective implementation of international human rights standards in the country and that it can serve as an advisory body to the authorities in drafting new legislation that can have an impact on human rights. By reporting regularly, it would also highlight strong points and weaknesses in the legislation, which could then serve as important indicators to the authorities in developing policies.

V. Conclusions and recommendations

70. **Throughout all his activities, the Special Rapporteur reiterates the importance of freedom of opinion and expression in a truly democratic society. He emphasizes that the protection of the right to freedom of opinion and expression is at the heart of the promotion and protection of human rights. In this respect, he recalls Commission on Human Rights resolution 2003/42, in which the Commission stated that the effective promotion and protection of the human rights of persons who exercise the right to freedom of opinion and expression were of fundamental importance to the safeguarding of human dignity and that restrictions on the exercise of the right to freedom of opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms.**

71. **Italy has made clear commitments in ratifying multiple international treaties establishing the right to freedom of opinion and expression. The national legal framework of Italy mostly reflects those commitments. However, as indicated above, a number of concerns remain, both with regard to the persistence of inadequate legislation and to the implementation of existing regulations regarding issues such as defamation, media ownership and oversight.**

72. **The Special Rapporteur appreciates that Italy is in a period of transition and that the State authorities recognize the need to further debate this issue and enhance their attention to freedom of expression in the country. During its universal periodic review in 2010, Italy accepted recommendations related to concerns addressed in the present report, such as the need to adopt measures and safeguards to ensure the independent functioning of the media without the influence of the State, and the need to address concerns over media concentration.**

73. **In this regard, to further strengthen the democratic foundations of Italy, the Special Rapporteur, in a spirit of constructive engagement, recommends the steps out below.**

A. Defamation

74. **Defamation should be decriminalized completely and transformed from a criminal to a civil action, in order not to dissuade freedom of expression. The Senate should revise the amount of reparation and maintain the principle of proportionality. The Parliament should repeal article 341 bis of the Criminal Code, which punishes insults directed to public officials in the presence of other people.**

75. **The Government should promote a culture of tolerance regarding criticism, particularly of public officials and bodies and other influential figures, which is essential for democracy.**

76. **Defamation claims should never be used to stifle criticism of State institutions and policies. Public officials and bodies should refrain from filing defamation suits, as public office entails public scrutiny as part of the checks and balances in any democratic society. In order to further discourage the practice of frivolous litigation, in addition to the legal costs, the law should establish a mandatory economic penalty representing a percentage of the amount of civil reparation requested.**

B. Media ownership and conflict of interest

77. **The Special Rapporteur urges the Government to promote and protect media diversity and pluralism by preventing cross-ownership of print and broadcast media.**

78. **The Frattini Law should be amended to introduce an explicit incompatibility between holding elected or government office and ownership and control of the media.**

79. **In order to enhance transparency, an obligation to disclose the full identity of the ownership of the media and their internal decision-making mechanisms, should be established. This information should be made fully accessible to the public by the competent regulatory body, AGCOM.**

80. **AGCOM should also make information on the sources of revenue of the media fully accessible to the public.**

C. Public broadcasting service

81. **RAI should be placed under the control of an independent body, such as a trust fund or a broadcasting institution, and be administered as a public asset.**

82. **The appointment of the members of the Board of RAI should be conducted in a transparent way, as with regulatory bodies. The selection criteria for Board members, and information on the qualifications and professional experience of the applicants should be published and made accessible to the public, including on the Internet. The shortlisted candidates should be called to a public hearing in the Parliament and the final decision should be made through a public vote.**

D. Communications Regulatory Authority

83. **The Parliament should establish a mechanism that would ensure the transparency of the election processes for members of the boards of regulatory bodies. The selection criteria for the AGCOM Board membership, and information on the qualifications and professional experience of the applicants should be published and made accessible to the public, including on the Internet. The shortlisted candidates should be called to a public hearing in the Parliament and the final decision should be made through a public vote.**

E. Anti-trust provisions

84. **A legislative overhaul should be undertaken of the radio and television normative system, especially the anti-trust provisions. The lack of clarity on**

thresholds identifying what would constitute "dominant positions" in the media market and the recent removal of the ban on broadcasters who operate more than one national channel owning or purchasing shares in newspaper publishing companies are among the concerns which would need to be addressed in the review.

F. Situation of journalists

85. All acts of intimidation and violence against journalists need to be fully investigated. In this regard, consideration should be given to the adoption of specific initiatives dedicated to preventing and investigating attacks, and bringing those responsible to justice.

86. Attention should be paid to the working conditions of journalists. Standards should be set, including tariffs for fair remuneration of journalists' work subject to periodic review.

G. Access to information law

87. The Parliament should enact a full access to information law applicable to all public institutions, which would guarantee access to public information on financial and political matters to citizens, with the fewest restrictions possible. Procedures for accessing information need to be fully revised in order to ensure that access to information is rapid, inexpensive and not unduly burdensome. Access to information can be further enhanced through the appointment of a focal point, such as an independent information commissioner, or the establishment of a specialized institution to promote and monitor the implementation of national norms on access to information.

H. Hate speech

88. Legal measures combating hate speech should be complemented by a broad set of non-legal measures to bring about genuine changes in mindsets. The Special Rapporteur underlines his full support to the work of the Ministry of Integration in developing awareness-raising programmes, including information and education campaigns on diversity. Political leaders and public officials must systematically denounce and condemn hate speech publicly, and actively promote a culture of tolerance. The proposed bill on homophobia and transphobia should be amended to eliminate all exceptions for institutions or particular groups.

I. National human rights institution

89. A national human rights institution should be established in accordance with the Paris Principles. Such a body could play an important role in catalysing legal and policy initiatives relevant for the promotion of the right to freedom of opinion and expression.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue

Addendum

Mission to Montenegro: comments by the State on the report of the Special Rapporteur*

* Reproduced as received.

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1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression visited Montenegro from 14 to 17 June 2013, based on the open invitation extended by the Government of Montenegro using al the special procedures. The Government of Montenegro appreciates highly the engagement of the Special Rapporteur and understands his visit as an additional step forward in the efforts to look into the possibilities for further promotion of media freedom in Montenegro. The Government of Montenegro is grateful to the Special Rapporteur for his commitment and engagement and appreciates highly the cooperation in the preparation of this visit with the Special Rapporteur himself, his associates, as well as the team of the UN system in Montenegro. Mutual coordination and understanding represent a confirmation of excellent relations between Montenegro and the United Nations, contributed by the activities of Montenegro as a member of the Human Rights Council.

2. The Government of Montenegro extends its gratitude for the acceptance of a set of comments of a technical character, sent with the aim to improve the text of the Report. In order to contribute to additional improvement of the Report prepared by the Special Rapporteur and contribute to the objectiveness of its findings, the Government of Montenegro submits this paper, as well, which contains explanations of the activities taken with regard to specific parts of the Report. Namely, this document, if considered together with the Report, contributes to the presentation of the state of freedom of opinion and expression in Montenegro in an objective manner, thus contributing also to the full exercise of mandate of the Special Rapporteur for freedom of opinion and expression with regard to transparency, objectiveness and constructiveness.

3. Fully respecting the use of information provided by other domestic and international actors, the Government of Montenegro finds it necessary to draw the attention to a set of inaccuracies and a number of irregularities in the given data, based on which numerous facts are inadequately interpreted, resulting in the drawing of imprecise or wrong conclusions. We noted that the final text failed to include a set of concrete facts and results achieved with regard to the issues raised by the Rapporteur, which were presented by the high Montenegrin officials from over 10 institutions to the Special Rapporteur in direct discussions. Neglecting argumentative facts and views of the official state authorities and relying on non-argumentative statements from other sources, which are not supported by evidence, in many parts of the Report, unfortunately resulted in a one-sided look into the status of the freedom of opinion and expression.

4. Besides, commenting the efforts aimed at prevention and sanctioning of assaults on journalists in the period following his visit, the Special Rapporteur relied on the sources mentioned in the footnote (footnote no. 6), which present incorrect facts. Having in mind that the Special Rapporteur failed to ask the Government of Montenegro to provide official facts, underlying here – official facts, not only views, prior to drafting the final text, the Government of Montenegro feels the duty to present in this document clarification of the progress achieved that was not noted in the Report prepared by the Special Rapporteur, together with the supporting facts and arguments. Besides contributing to the objectiveness of the final assessment, the fact we are presenting here also prove the commitment of the state institutions to pay priority attention to the protection of journalists within the overall protection of human rights and liberties.

5. With an additional aim to provide an objective analysis of the status of media freedom in Montenegro, we are quoting part of the Analytical Report, accompanying the EC Opinion on Montenegro's application for membership of the European Union, from 2010, states as follows: "*Freedom of expression (including the media) is guaranteed by the Constitution and broadly applied in practice. The media landscape is diverse and pluralistic. The Law on electronic media, together with the amendments to the Law on electronic communications lays a good legal basis for developing and regulating the public*

broadcaster and, more broadly, for independent and professional media."[1] Besides, as a confirmation of the commitment to guaranteeing freedom of expression, in the latest EC Progress Report for Montenegro, in Chapter 23 (Justice and Fundamental Rights) is is emphasized that *"freedom of expression has continued to be ensured, e.g. with the recent start of more serious investigations into cases of violence against journalists and the pronouncement of verdicts in some cases"*.[2][3] The assessment from the *2013 EC Progress Report for Montenegro*, given in the part related to chapter 10, *Information society and media*, which states that *"a good level of legal alignment has been reached"*, confirms the quality of the legislative framework.[4]

6. In the text that follows, please find additional facts and assessments that confirm the commitment of all the Government institutions to build a society based on fundamental values of democracy and observance of human rights and liberties, including the right to freedom of opinion and expression.

Summary

7. In the period following its independence, Montenegro achieved significant progress with regard to improvement of its legislative framework, enforcement and achievement of international standards of protection of the freedom of opinion and expression and protection of journalists.

8. Key activities of Montenegro that contributed to the promotion of the freedom of opinion and expression are as follows:

(a) The Commission for monitoring of actions taken by the responsible authorities with regard to investigations of cases of threats and violence against journalists, assassinations of journalists and assaults on media property was established on 26 December 2013. This Commission has 11 members, and its chair is the Deputy Editor in Chief of the Dan Daily, Mr. Nikola Markovic;

(b) The accused for the assassination of the Editor in Chief of the "Dan" Daily was pronounced a non-repealable single sentence of 19 years in prison;

(c) In February 2014, a Working group responsible for Risk assessment regarding danger for the employees in the media sector was established;

(d) In 2013, there were two pride parades organized in Montenegro, with the support of the Government of Montenegro, and the Police Directorate and the Ministry of Interior received public acknowledgment for that from the organizers – non-governmental organizations for the protection of rights of LGBT population;

(f) Public assembly represents a constitutional category. In the period January 2012-May 2014, there were **3,127** public gatherings held, while **118** were prohibited in the cases when the participants were posing direct danger to themselves or others by such gathering (e.g. protest walk of the persons with professional disability down the highway);

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[1] Analytical Report, accompanying the EC Opinion on Montenegro's application for membership of the European Union, from 2010, pg. 25

[2] 2013 EC Progress Report for Montenegro, pg. 57

[3] Montenegro created the legislative framework for free establishment and work of media, based on the principles of freedom, professionalism, independence, objectiveness and transparency in the functioning of the media; Media Law (Official Gazette of RoM 51/02, 62/02)

[4] 2013 EC Progress Report for Montenegro, pg. 34

(g) Defamation was decriminalized and all of the ongoing criminal proceedings involving defamation and insults before the Montenegrin courts, in which media were indicted, have been finalized with effective decisions of the courts;

(h) In 2011, the Supreme Court adopted the Principal Legal Position that is binding for all the national courts – that monetary compensation for damage pronounced by the court shall not involve excessive amounts that may have a discouraging effect on journalists and the media in the exercise of their role in preserving democratic values in the society.

(i) A three year model of transparent and independent financing of self-regulatory bodies was defined with the aim to promote self-regulation and encourage creation of basic prerequisites for work of the self-regulatory bodies;

(j) The Agency for Personal Data Protection and Free Access to Information registered in its database a total of 3600 applications, out of which 885 were denied and 10 were rejected.

Part III of the report – Domestic legal framework

9. Part III of the Report did not include the information that the Law on amendments to the Criminal Code from August 2013 introduces in the criminal legislation of Montenegro a new basis for exempting from punishment certain criminal offenses from Chapter Fifteen - criminal offences against freedoms and rights of man and the citizen that is based on the principle of predominant interest. Namely, for certain criminal offenses this involves unauthorized encroachment into the private life of the individual that can be justified if this is done in order to prevent or detect serious offenses Article 176a ("Exemption from punishment for criminal offences under Articles 172-176 of the Code): "No punishment shall apply for crimes under Articles 172-176 to anyone who by committing any of these offences prevents or detects a crime punishable by law by a five-year prison term or a more severe punishment."

Part IV of the report – Freedom of opinion and expression

B 1. Violence and intimidation of journalists

10. The Report contains the following inaccuracies: The Rapporteur did not ask Montenegro to provide data regarding cases of assaults on journalists that he mentions in the Report referring to the source in footnote 6, which relates to the period following his visit, based on which he defined certain conclusions and comments that do not reflect the actual situation – ***See Annex 1 – Paragraph 24.***

11. The Report also contains inaccuracies regarding legal terminology, leading to wrong perception of the actions taken by the authorities in the given case – **See *Annex 1 – Paragraph 26.***

12. The Rapporteur failed to include important facts regarding actions taken by the state authorities in the given cases – ***See Annex 1 - Paragraphs 30 and 31***

Paragraphs 76 and 77 of the Report – Recommendations regarding violence and intimidation of journalists

13. The recommendations did not take into consideration achievements of the Government of Montenegro in the period following the visit of the Special Rapporteur, that is, the Report recommends measures and activities that are already well underway. Namely, **The Rapporteur recommends that: "Paragraph 76** – *The identification of responsibilities in all cases of violence and intimidation against journalists must be achieved without delay, so perpetrators are brought to justice. In particular, adequate resources must be provided to ensure that the recently established commission for monitoring investigations into attacks on journalists fully succeeds in its task. Specific attention must be given to the clarification of the potential direct or indirect involvement of the authorities or public officials in all episodes of violence;* **Paragraph 77** – *The authorities should value the work of the investigative press in their statements and refrain from attacking it. Particular attention must be paid to ensuring accountability in episodes of violence against the press by members of political parties".*

14. We hereby provide the following facts, in support of the statement that recommendations are being implemented. The Commission for monitoring of actions taken by the responsible authorities with regard to investigations of cases of threats and violence against journalists, assasinations of journalists and assaults on media property was established. This Commission has 11 members, and its chair is the Deputy Editor in Chief of the Dan Daily, Mr. Nikola Markovic. Besides Markovic, members of this commission include representatives of the State Prosecutor's Office, the Police Directorate, the National Security Agency, the independent daily "Vijesti", the Media self-regulation council, the Trade Union of the media and the civil sector. International experts, that is, international organizations whose portfolio includes areas related to the tasks of this Commission can also participate in its work, and the interest of this kind was already expressed by the Organization for Security and Cooperation in Europe (OSCE). The Commission held six meetings so far, and the sixth meeting was attended by the co-rapporteurs of the Monitoring Committee of the Council of Europe Parliamentary Assembly, Mr. Kimo Sasi and Mr. Terry Leyden. The Commission has regular meetings, with the support provided by the Ministry of Interior to all of the commission members, in terms of providing insight into all hte acts, documents and facts that resulted in solving the cases from the aspect of the police. The Ministry of Interior also provides administrative support and business premises for the work of this commission.

B 2 – Defamation

15. In ***Paragraph 39*** the Rapporteur interpreted views from the study "Independent legal mission to study press freedom in Montenegro" in the manner which disputes the exercise of the right to legal remedy and the principles of independence and autonomy of judiciary in Montenegro. Contrary to that, we hereby state that the courts cannot deny the right to court protection to the citizens, including the right to lodge a lawsuit for compensation of non-material demage caused by encroachment or violation of rights, irrespective of who the defendant is – the media/ journalists or some other person. The courts have a constitutional and legal obligation to decide autonomously and independently, in regular court proceedings, whether petitions of this kind are grounded, including the duty to decide on lawsuits against journalist/ the media that were possibly frivolous or politically motivated.

16. ***Paragraphs 40 and 42*** of the Report contains inaccurate data regarding cases of compensation of damage involving journalists/ the media as the defendant. The caselaw

shows that out of the total number of cases received, the courts accept a very small number of petitions of this kind, they award compensation of non-material damage in the amounts that are far smaller than the ones requested in the petitions. The courts are applying the Principal Legal Position of the Supreme Court from 2011 related to awarding of a fair compensation of non-material damage in cases involving journalists/ the media as the defendant, while observing the caselaw of the European Court of Human Rights.

17. The following facts also confute the statements contained in ***Paragraphs 40 and 42***. In 2012, no verdict was adopted involving compensation of non-material damage, and two petitions were rejected. In 2013, the courts processed 23 cases involving journalists/ the media as the defendant, and eleven cases were solved. Out of that number, in seven cases the court rejected the petitions. Decisions to withdraw the lawsuit were adopted in two cases, and they are now effective (non-repealable). In one case (Basic Court in Podgorica) the court decision was adopted awarding the compensation of non-material damage in the amount of EUR 5,000, while the amount requested in the petition was EUR 100,000. Appellate process is underway in this case. In one case, the petition was partially accepted, by which the defendants are obliged to jointly compensate the non-material damage based on offended honor and reputation in the amount of EUR 2,000, while the amount requested in the petition was EUR 15,000. Appellate process in this case is also underway. In 2014, there are ongoing litigations in 25 cases involving compensation of non-material damage with journalists/ the media as defendants – *(See ANNEX 2) – Table "Pending cases"*.

Paragraph 78 of the Report – Recommendation regarding defamation

18. This recommendation ignores the activities undertaken in Montenegro with regard to defamation and proposes them as introduction of new measures. Namely, the Rapporteur recommends as follows – ***Paragraph 78***: *"The work of Montenegrin courts that are implementing the new national norm for defamation must be closely monitored to ensure that complaints of defamation are not used to intimidate the press. Courts must be systematically made aware of international standards relating to the imposition of penalties for defamation. The authorities must respect the freedom of the media to investigate their activities and refrain from using judicial instruments on defamation to intimidate critical voices in the press."*

19. Defamation was decriminalized and all of the ongoing criminal proceedings involving defamation and insults before the Montenegrin courts, in which media were indicted, have been finalized with effective decisions of the courts. Thus, there is no mention that the Government is using judicial instruments related to defamation to intimidate critical voices of the press, that is, this statement by the Special Rapporteur is not based on facts.

20. In 2011, the Supreme Court adopted the Principal Legal Position that is binding for all the national courts acting in cases of compensation of non-material damage involving journalists/ the media as defendants. If found that there are grounds for accountability of journalists and media, a court sets the amount of fair compensation for violation of personal rights (reputation, honour, etc.) taking into consideration all circumstances of the respective case, in particular: importance of violated right and the consequences thereof, duration of distress, objective of the compensation for moral damage, and taking into consideration that the awarded compensation should be, by default, in compliance with the case law of the European Court of Human Rights, and that the amount of the awarded compensation does not discourage journalists and media in fulfilling their role in preservation of democratic values of the society. In practice, the courts have been abiding by the standards of the ECHR and by the Legal Position of the Supreme Court in relation to the value requested in the petitions. Out of 23 cases processed in 2013, the claims were accepted in two cases

only. Defendants in both cases were media as legal persons, not journalists as individuals. In the 2013 Progress Report for Montenegro, the European Commission stated in its assessment of the "Freedom of Expression" that courts in Montenegro had been generally abiding by the case law of the European Court of Human Rights, and training of judges on ECHR standards will continue through the Judicial Training Centre.

B3 – Government interference in the media

21. With regard to ***Paragraph 48*** of the Report, were give the following explanation regarding ensuring independence of the public broadcaster. The Law on Public Broadcasting Services of Montenegro is harmonized with the recommendation No. (96) 10 of the Council of Europe on the guarantee of the independence of public service broadcasting. According to the assessment of the European Commission, Montenegro has achieved a good level of harmonization of the legal framework in the field of information society and media, as well as necessary administrative capacities, which resulted in opening of negotiations on Chapter 10 "Information society and media" at the Intergovernmental conference in Brussels on 31 March 2014.

22. The role of the state in the upcoming period of European integration relates to creation of prerequisites for sustainable work of the public broadcaster and for digitalization, as the key element for future of the broadcasting sector. The process of transition of the broadcasting service will involve looking for an adequate financial model to ensure sustainability that will not have a negative impact on the operations of the broadcasting service in public interest. This is a challenge that awaits not only Montenegro, but also many other modern societies in the world. In the attempt to respond to this challenge, the Government of Montenegro will follow relevant international practice, especially the EU legislation in this field.

Paragraph 79 – Recommendations regarding the Government interference in the media

23. Recommendation of the Special Rapporteur regarding privatization of Pobjeda and transparency in the allocation of public resources for advertisement does not reflect the efforts made in this area. The Rapporteur recommends as follows: ***Paragraph 79*** – "*The Government must urgently conclude the transfer of Pobjeda to private hands, as its continued ownership of his daily newspaper and the perceived political bias in its editorial line contributes to the politicization of the national media. The Government should also ensure full transparency with regard to the allocation of public resources in advertising by guaranteeing their fair distribution across all media. The autonomy and full independence of the public broadcasting services and of the Agency for Electronic Media must be ensured on permanent basis* ".

24. Namely, privatization of Pobjeda was included in every decision regarding privatization plan in the period 2007-2014, irrespective of whether it was simply about launching a tender or continued implementation of a tender, which clearly indicates the intention and willingness of the Government of Montenegro to privatize this company, in compliance with the obligation under the Law on Media. The Council for Privatization and Capital Projects launched three public tenders for privatization of the shareholding company "*Pobjeda*": on 21 November 2007, on 29 July 2008 and on 27. September 2011. The tenders failed only as a result of the withdrawal of bidders originally interested in purchasing Pobjeda, and not because the Government of Montenegro did not want it to be privatized. In the meantime, the company has been working continuously on reducing the number of employees through the Voluntary redundancy programme, creating more

favourable conditions for privatization. The number of employees in Pobjeda a.d. in the period between 2005 and 2014 has been reduced by more than twice, from 425 to 195 employees. By signing the Agreement on settling liabilities to the State with NIG Pobjeda AD in February 2013, the Government resolved the issue of fiscal debts of the company that had existed until then and which were standing in the way of privatization in the previous period. Thus, all the prerequisites for privatization have been created.

25. As stated before, the Government of Montenegro is taking action aimed at ensuring media pluralism, while taking care at the same time of the sustainability of the media and self-regulatory bodies, as well as the balanced distribution of funds for their work.

B4 – Polarization of the media

26. ***Paragraphs 53 and 54*** of the Report related to polarization of the media are deficient with regard to information on the Government's support to self-regulatory bodies presented to the Special Rapporteur.

27. Having in mind that media self-regulation is of special importance for the development of democratic, political and media culture, protecting at the same time the freedom to expression, and it also means assuming responsibility for public discourse, the Montenegrin model for the state's participation in financing of independent self-regulatory bodies has been designed in such a way that it does not allow for jeopardising their independence in relation to the Government. On the basis of the opinion of the European Commission - media (2011-2014), in cooperation with the EU Delegation to Montenegro, the Government of Montenegro adopted a model of three-year step-up financing of media self-regulatory bodies in order to promote self-regulation and create conditions for functioning of self-regulatory bodies. Self-regulatory bodies were obliged to choose independently a financing model, and the establishment of the model of state support resulted from the requests of self-regulatory bodies themselves, due to their inability to get funds from other sources. Self-regulatory bodies are not obliged to submit the Report on disbursements of allocated funds, and all of this indicates that their independence cannot be called in question. Based on the said model, since 2012, two self-regulatory bodies – Media Self-Regulation Council (18 members) and Self-Regulatory Local and Periodical Press Council (22 members) – have been financed regularly through the said model, which will be implemented ending with 2014. As per the defined model, obligations towards self-regulatory bodies have been fully implemented for 2012 and 2013, and support for 2014 is being prepared.

28. In 2011, the Government of Montenegro purchased all debts of private printed and electronic media, who had not settled their liabilities for signal frequency, and of all printed media who had not settled financial obligations towards commission distributors, whereby the media themselves are responsible for the choice of commission distributors. Specifically, the Government of Montenegro has purchased debts of commercial broadcasters to the Agency for Electronic Communications (AEC) and the Radio Broadcasting Centre (RBC) in the amount of 4.447.639,61 €.[5]; state support to commercial

[5] The programme was implemented in the period 2011-2013 with the following dynamics: in 2011, 2.148.174,81 € (48% of the total allocated amount); in 2012, 1.512.197,48 € (34% of the total allocated amount; in 2013, 787.267,34 € (18% of the total allocated amount).

printed media in the amount of 880.802,32 € has been realized as well, without discrimination of any key printed media and daily newspapers[6].

Paragraph 80 – Recommendation regarding polarization of the media

29. In **Paragraph 80** the Rapporteur recommends as follows: "A better dialogue among all media outlets is essential to permit a more objective discussion on the challenges faced by this vital sector. All media groups must be stimulated to voluntarily take part in self regulatory initiatives, to pay particular attention to the elimination of discriminatory remarks and to improving the quality of the work currently being developed. To be effective, self-regulatory bodies must have their work well publicized among readers and viewers, so these may file complaints, if desired. The staff that supports self-regulatory initiatives must have their independence from media owners preserved."

30. Having in mind that the media are free, that is, independent in designing their editorial and management policy, the issue of polarization of the media exceeds the role of the state, which, according to the European standards in the media sector, cannot act as a mediator in such and similar situations. The issue of reducing polarization of the media relates directly to the media owners, who design editorial policy. Interference of the state in the work of media is reduced only to the transparent and equal incentives for sustainability of the self-regulatory bodies, upon their request, as well as incentives for media pluralism, as confirmed by the aforementioned data.

B 5 – Access to information

31. The statement by the Special Rapporteur from ***Paragraph 62*** that the deadline for deciding on the application for free access to information has been doubled is not grounded, having in mind that the deadline in Montenegro is among the shortest ones in Europe. The deadline to decide on an appeal to the first instance decision is 15 days, and in the opinion of the international experts it is very short. The Agency Council, as the second instance body, has the duty to decide on meritum, which is also a rare example and a significant step forward that Montenegro made in promoting the right of the public to know. It is a fact that certain laws give the possibility to limit access to information, however, they were adopted prior to the Law on Free Access to Information, thus, the provisions contained in them cannot be applied, and access to information can only be limited in the manner and according to the procedure defined by the Law on Free Access to Information. There is notable progress made with regard to the percentage of decisions by the authorities with regard to applications for free access to information; it is significantly higher than 48% that it used to be. The Agency for personal data protection and free access to information has registered in its database a total of 3600 applications, out of which 885 were denied and 10 were rejected.

32. There is an obvious increase in political will, as well as public awareness that free access to information can provide for efficient control of work of the authorities. During the current year, although it is not fully equipped in terms of staff and financial resources, the Agency has been strengthened significantly, thus it meets, with a greater or lesser success, its legally prescribed obligations. Via its web site, as well as through the presence in the

[6] The amount allocated to Bega Press for execution of commission agreements with publishers - Jumedia Mont, Pobjeda Ad. Daily Press and Monitor), as follows: JUMEDIA MONT DOO - Daily "Dan" - 332.686,82€; POBJEDA AD - Daily "Pobjeda" - 267.598,94€; DAILY PRESS DOO - Daily "Vijesti" - 255.756,31€; MONITOR DOO - Weekly "Monitor" - 24.760,25.

media, the Agency has regular contacts with the public, with the aim to raise public awareness about the fact that the citizens have the right to know at any point in time which one of the state authorities and in which way performs tasks in their interest, on behalf and at the expense of the citizens, and which authority is neglecting its duties. The problem that the Agency still faces is the inadequate IT solution that is used to register applications for free access to information, decisions regarding those applications and the appeals lodged and decisions of the second instance authority.

Paragraph 81 – Recommendations regarding access to information

33. The Special Rapporteur recommends enhancing access to information in **Paragraph 81** as follows: "Adequate financial and human resources must be secured for the newly established Agency for the Protection of Personal Data and Free Access to Information so it can fully implement its mandate with autonomy and independence. The Agency should be capable of processing all requests effectively and also systematically report on institutional compliance with the law. Investments must be made to make civil society aware of the procedures for requesting information and to enhance the capacity of all public entities to comply with the law through technical support and training."

34. The Agency for personal data protection will continue to invest maximum efforts in order to fully implement this recommendation.

B 6 – Incitement to hatred and Paragraph 82 – Recommendation regarding incitement to hatred

35. With regard to incitement to hatred, the Special Rapporteur, in **Paragraph 82** recommended as follows: "The state must actively promote the right to expression of minorities, ensuring the full independence of those benefiting from financial resources. Law enforcement authorities must fully implement national norms regarding the prohibition of discrimination on all grounds. Specific attention must be paid to the recurrently high levels of hostility against the LGBT community. In particular acts of aggression against this community must be fully investigated. The authorities must publicly express their complete rejection of all forms of incitement to hatred. Efforts to promote the self-regulation of the media should also play an important role in ensuring better protection against incitement to hatred through the media."

36. In the context of promotion and protection of the rights of the LGBT population, the Ministry of Interior and the Police Directorate are continuously developing a special sensibility for addressing all issues faced by members of this minority group. In this segment, actions of MoI of Montenegro rely on the principles of IDAHO Declaration, which sets out that *"all human beings are born free and equal in dignity and rights, and that human beings of all sexual orientations and gender identities are entitled to the enjoyment of human rights"*.

37. By securing two Pride Parades during 2013, the Police Directorate confirmed its capacities to respond to all tasks[7]. PD signed Memorandums of Cooperation with NGOs working towards promotion and protection of the rights of the LGBT community, primarily

[7] *A positive assessment of the efforts of the Montenegrin police and the Ministry of Interior, as well as the qualification of Montenegro as the regional leader in protecting and promoting rights of LGBT population was given by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, in his Montenegro Mission Report.*

with the NGO Queer Montenegro, LGBT Forum Progress and Juventas. "Team of trust" was established in 2014, consisting of police officers who had completed training to work with the LGBT community, and members of the LGBT community. The team meets regularly and reviews issues related to LGBT rights in order to find adequate solutions in different situations.

38. Representatives of PD participated actively in drafting of the Strategy for improving quality of life of LGBT persons for the period 2013 - 2018, and in drafting of the Action Plan for implementation of this Strategy for 2013. The Police Directorate delivered training to police officers for sensible work with the LGBT community and appointed LGBT contact police officers in all police stations in Montenegro.

39. In December 2013, the Police Directorate, Ministry of Interior and NGO LGBT Forum Progress issued a joint publication "Police, Tolerance and Accepting Identities".

40. The new Law on Changes and Amendments to the Anti Discrimination Law, adopted at the session of the Parliament of Montenegro on 26.03.2014, tightened the penal policy relating to committed discrimination (ranging from 500 to 20.000 EUR) and introduces explicitly the institute of prohibition of hate speech, for the purpose of enhancing mechanisms for protection and promotion of anti-discriminatory policy. The Law on Gender Equality obliges media to "promote gender equality through a programme concept". The Ministry for Human and Minority Rights is continuously providing training[8] to protectors of human rights, police and prosecution organisations, government employees, representatives of judiciary authorities, representatives of local governments, inspection services and others competent for providing protection against discrimination, and legal and psychological support to victims and witnesses of violence and hate crimes. Institutions competent for fighting against discrimination will be, by applying improved legal framework, better prepared for implementation of international standards and national legislation and will cooperate more efficiently on protection of the rights of marginalized groups (Roma, LGBT, persons with disabilities, women and minorities).

41. The Public Prosecution Office of Montenegro acted on 18 applications filed by NGO LGBT "Forum Progress" against 23 known persons and 3 unknown persons, and against 1 daily newspaper. With regard to cases of violation of the rights of LGBT persons from 01 January 2011 to 31 December 2013, regional misdemeanour authorities processed 66 cases in total relating to misdemeanours involving violation of rights of LGBT persons, out of which 44 cases or 67% were completed on 12 February 2014. The completed cases were solved by fines in 30 cases, imprisonment in one case, warning in one case, corrective measure in one case, statute of limitations with 7 verdicts of acquittal. The Misdemeanour Committee of Montenegro had no cases in which filing of charges was rejected.

B 7 – Restrictions of public demonstrations

42. The fact that a number of political public assemblies – peaceful protests, and the Pride Parade in the center of town, were organized in the past years demonstrates that the Government of Montenegro allows for exercising of the freedom of public assembly, and the allegations that the Special Rapporteur obtained from the sources that provide no arguments for their claims are incorrect that the provision of the Law relating to the need to

[8] http://www.mmp.gov.me/ResourceManager/FileDownload.aspx?rid=148839&rType=2&file=PLAN%20ZA%20EDUKACIJU%20DR%C5%BDAVNIH%20SLU%C5%BDBENIKA,%20NOSIOCA%20PRAVOSUDNIH%20FUNKCIJA. Pdf

notify the Police Directorate of organization of public assemblies is misused by being interpreted as a request for approval.

43. In relation to passing acts to prohibit certain public assemblies (public demonstrations), the actions taken were legal and professional, fully taking into account and considering every request – application individually. In addition to considering compliance with the prescribed legal provisions which define the content of an application for a public assembly, a competent organizational unit invites and interviews (often on several occasions) the applicant for the purpose of complete and objective actions. Reasons for prohibiting a public assembly relate in most cases to safety of persons (organizers and persons who intend to participate in the public assembly), safety of traffic, movement and work of other citizens.

44. Prior to passing an act prohibiting a certain public assembly, the police have almost all the relevant information relating to the public assembly and prepares security assessment on the basis of such information. If the organizer intends, in addition to an assembly in a specific place at a specific time, to endanger lives and health of participants of the public assembly, of other citizens or traffic safety, by certain type of movements *(walking along vital town roads, motorway, regional and local roads, etc.)*, if it is not possible to reach any kind of a "compromise" with the organizer in terms of alternation of the route, identifying another location for the assembly, etc., the competent organizational unit of the police prohibits such public assembly. Efforts are made in every specific case to comply with all applications for organizing public assemblies, even when minimum requirements for such assemblies are met. In 2010, the police secured public assemblies in 2.283 cases and rendered 78 decisions prohibiting peaceful assemblies. In 2012, the police secured public assemblies in 1.809 cases and rendered 56 decisions prohibiting peaceful assemblies. In 2013, the police secured public assemblies in 1.643 cases and rendered 47 decisions prohibiting peaceful assemblies. In January, February and March 2014, the police secured public assemblies in 395 cases and rendered 15 decisions prohibiting peaceful assemblies[9].

[9] *For instance, a protest walk of **disabled workers** along a dangerous 118 km long motorway from Bijelo Polje to Podgorica was prohibited on a number of occasions.*

Annex I

Journalists

45. ***Paragraph 24*** – In the period from 2008 to February 2014 there were 34 registered cases, not 30 as teh Rapporteur stated in the report, where physical force or serious threats were used against representatives or property of the media, and out of that number 26 cases are finalized, in the way that 20 of them were processed, while in 6 cases of reported assaults the prosecutor assessed that "there are no elements of a criminal offense". In the given period, there were 13 criminal and 10 misdemeanor reports filed, involving 36 persons. Analyzing the structure of perpetrators, it is not possible to conclude that motives behind the attacks were of a political nature, because in most cases the processed persons were not employees of the state authorities or persons belonging to political parties. Besides, the analysis of the recorded events shows that in a number of cases there were personal reasons involved or on the spot conflicts. In agreement with the responsible prosecutors, in late 2013 working teams were established, with the aim to solve cases of damage cause to the independent daily "Vijesti", attack on the journalist of the "Dan" daily, Lidija Nikcevic, and attack on the journalist from Berane, Tufik Softic. As a result of this activity, the cases of activation of an explosive in the building of the independent daily "Vijesti" in Podgorica were solved - on 8 March 2014, the case of a criminal offense of causing general danger, together with the criminal offense of unauthorized carrying of weapons and explosives, perpetrated on 26 December 2013 against the editorial of the independent daily Vijesti in Podgorica was solved and two persons were processed. The case involving one journalist, Ms. Milka Tadic Mijovic was solved. She reported that she received serious threats via SMS service on her mobile phone from an unknown person. In this respect, the person who sent these threatening messages to the journalist was identified, and the case was referred to the responsible prosecutor for further action.

46. ***Paragraph 26*** – The first-instance judgement of the Higher Court in Podgorica was reversed by the judgement of the Appellate Court of Montenegro and the accused D.M. was convicted to a cumulative sentence of 19 years of imprisonment, and the judgement of the Higher Court in Podgorica K.no.109/08 of 27.04.2009 became final and enforceable on 4.12.2009.[10] The Supreme State Prosecutor's Office has opened a case for the purpose of discovering accomplices in the murder of Duško Jovanović. A number of witnesses are being interrogated. Regarding facts, D. M. is charged with being an accomplice of "for now unidentified persons" and with killing with intent Duško Jovanović, and an attempt to murder M. M. The description of facts presented in the judgement does not include descriptions of individual actions of D.M., such actions are not separated in relation to actions of other unidentified perpetrators respectively, and the number of unidentified perpetrators is not specified, but all acts committed by D.M. and unidentified accomplices are described as jointly committed acts. It follows from the above that the statement of the Rapporteur that "One person was convicted for being an accomplice" is incorrect because D.M. was convicted as one of perpetrators, and not as an accomplice, whereas other perpetrators have not been identified and processed by the Prosecutor's Office.

47. ***Paragraph 30*** - In the case of assault against Zeljko Ivanovic, following the measures and actions taken, the perpetrators have been identified and they confessed the offense. The Basic Court in Podgorica sentenced the accused P.R. and B.M. to one year in

[10] This decision can be downloaded from the web page of the Higher Court in Podgorica: http://sudovi.me/vspg/odluke/

prison each; this was a final decision of the court and both of them have served the sentence.

48. The case of assault against Mihailo Jovovic, Editor in Chief of the "Vijesti" Daily, from 2009 was processed by filing criminal charges against M.M. for the criminal offense of inflicting serious physical injuries, and the misdemeanor charges against the Mayor, M.M. The accused M.M. was found guilty and was conditionally sentenced (6 months in prison, conditional sentence of 2 years), and the mayor, M.M. was found guilty for a misdemeanor offense and fined with EUR 400.

49. ***Paragraph 31 -*** There were three registered cases of threats and assaults on the journalist Olivera Lakic. All three cases were processed, by filing the report in 2011 against M.S., for the criminal offense of endangering security; against G.M. in 2011, for the same criminal offense (later on, the prosecutor pressed charges for the criminal offense of false registration); and in 2012, against B.I. for the criminal offense of violent behavior. B.I. was sentenced to 9 months in prison.

Annex II

Table presenting ongoing litigations

Plaintiff	*Compensation of damage*	*Claim in €*	*Defendant*	*Court*	*Date when decision was adopted*	*Judgment or decision*	*Other relevant data (appeals)*
1.Mijović Milivoje P.no.3149/13	Non-material/moral	5.000€	"Jumedija mont"	Basic court in Podgorica	26.09.2013.	Court decision; claim partially accepted; 300 € fine; not final	
2. Zeković Sreten P.no.978/12	Non-material/moral	41.500€	"Pobjeda"	Basic court in Podgorica	22.04.2013	Court decision; claim denied; not final	
3.Radulović Slavko P.br.2090/12	Non-material/moral	20.000€	"Pobjeda"	Basic court in Podgorica	In process		
4.Kolarević Ana P.no.4675/12	Non-material/moral	100.000€	"Daily press"	Basic court in Podgorica	19.07.2013.	Court decision; claim accepted in the amount of 5.000 €; not final	
5.Kolarević Ana P.no.4676/12	Non-material/moral	100.000€	"Yumedia mont"	Basic court in Podgorica	17.10.2013.	Court decision; claim denied; not final	
6.Kolarević Ana P.no.4677/12	Non-material/moral	100.000€	"Monitor"	Basic court in Podgorica	18.10.2013.	Court decision; claim denied; not final	
7.Kalač Rešat P.no.4709/12	Non-material/moral	20.000€	"Dan"	Basic court in Podgorica	13.02.2014.	Court decision; claim denied; not final	

Plaintiff	*Compensation of damage*	*Claim in €*	*Defendant*	*Court*	*Date when decision was adopted*	*Judgment or decision*	*Other relevant data (appeals)*
8.Murić Hamdo P.no.4710/12	Non-material/moral	20.000€	"Dan"	Basic court in Podgorica	14.04.2014.	Court decision; claim denied; not final	
9.Kusturica Emir P.no.410/13	Non-material/moral	100.000€	"Monitor"	Basic court in Podgorica	14.06.2013.	Court decision; claim denied; not final	
10.Fatić Marija P.no.2487/13	Non-material/moral	50.000 €	"Daily Press"	Basic court in Podgorica	In process		
11.Justicija P.no.4097/13	Non-material/moral	To publish a counterargument	"Daily Press"	Basic court in Podgorica	29.04.2014.	Court decision; claim denied; not final	
12.Kufaj Hajdar P.no.4206/13	Non-material/moral	5.000E	"Dan"	Basic court in Podgorica	In process		
13. Vujović Dušanka P.no.4931/13	Non-material/moral	-	"Daily Press" "Yumediamont"	Basic court in Podgorica	In process		
14. Vojvodić Radislav P.br.4970/13	Non-material/moral	To publish a correction and reply	"Daily Press"	Basic court in Podgorica	In process		
15.Fatić Marija P.no.5088/13	Non-material/moral	50.000E	TV "Vijesti"	Basic court in Podgorica	In process		
16. Laković Miodrag P.no.5395/13	Non-material/moral	3.000€	"Yumediamont"	Basic court in Podgorica	In process		
17.Vujović Ivan P.no.1053/14	Non-material/moral	250.000€	"Daily Press"	Basic court in Podgorica	In process		
18.Žugić Radoje P.no.1171/14	Non-material/moral	15.000€	"Yumediamont" "Dan" daily	Basic court in Podgorica	In process		

Plaintiff	*Compensation of damage*	*Claim in €*	*Defendant*	*Court*	*Date when decision was adopted*	*Judgment or decision*	*Other relevant data (appeals)*
19.Popović Ljubomir P.no.1857/14	Non-material/moral	15.000€	"Yumediamont"	Basic court in Podgorica	In process		
20.ZDP Crne Gore P.no.1933/14	Non-material/moral	50.000€	ˇ Insajder timˇ Belgrade; Daily paper "Informer" Montenegro	Basic court in Podgorica	In process		
21. Akcija za ljudska prava P.no.2004/14	Non-material/moral	In order to publish a reply to the original text	ˇInsajder timˇ Doo Beograd; daily paper "Informer" Montenegro	Basic court in Podgorica	In process		
22. Bulatović Milena P.no.2109/14	Non-material/moral	10.000€	"Daily Press"	Basic court in Podgorica	In process		
23.Bulatović Luka and others from Bijelo Polje P.no.965/11	Non-material/moral	120.000€	1.Čikić Ibrahim 2."Daily Press" DOO Podgorica	Basic court in Bijelo Polje	Case in process. Main hearing finished on 05 May 2014 Court decision to be pronounced on 03 June 2014	Decision not final	-
24.Zeković Radivoje from Bijelo Polje P.no.81/13 Withdrawn, new no. 409/14	Non-material/moral	15.000,00€	1. "Daily press" for publishing activity Podgorica, 2. Aida Sadiković from Rozaje, journalist in the Vijesti daily		Court decision adopted on 08.11.2013 and it partially accepted the claim. Appealed by the plaintiff	Decision not final	

Plaintiff	*Compensation of damage*	*Claim in €*	*Defendant*	*Court*	*Date when decision was adopted*	*Judgment or decision*	*Other relevant data (appeals)*
					and the defendant . Decision revoked by the judgment of the Higher Court in Podgorica Ref. no. 5540/13 dated 03.04.2014. Case in process.		
25.Leković Georgina Borislav, Borivoje and Milanka P.no . 9/14	Non-material/moral	8.000,00€	"Yumediamont"		In process	Decision not final	